

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

VS.

WALKER IRRIGATION ET AL

Defendants,

3:73-cv-127-MMD-WGC

3:73-CV-128-MMD-WGC

MINUTES OF PROCEEDINGS

DATED: October 15, 2018

PRESENT:

THE HONORABLE **MIRANDA M. DU, U.S. DISTRICT JUDGE**

THE HONORABLE **WILLIAM G. COBB, U.S. MAGISTRATE JUDGE**

DEPUTY CLERKS: PEGGIE VANNOZZI/KATIE OGDEN

COURT REPORTER: KATHY FRENCH

COUNSEL PRESENT: Andrew "Guss" Guarino, DOJ, (via telephone) for the Indian Resources Division and the Walker Lake Paiute Tribe; David Negri, DOJ, for the departments of the Army, Marines, the U.S. Forest Service and the US Bureau of Land Management; Wes Williams for the Walker Lake Paiute Tribe; Gordon DePaoli and Dale Ferguson for Walker River Irrigation District ("WRID"); Nhu Nguyen for the State of California parties; Roderick Walston (via telephone) for Lyon County, Mono County and Centennial Livestock; Chris Mixon for National Fish and Wildlife Foundation; Karen Peterson for Water Master Joann Sarkisian; Bryan Stockton for Nevada Division of Wildlife; Gordon DePaoli for Fox Ditch Co. obo Frade Ranch; Iris Thornton (via telephone,) Simeon Herkovits and Mineral County District Attorney Sean Rowe (for Mineral County and the Walker Lake Working Group; Brad Johnston for Peri Family entities; Harry Swainston (via telephone) for the Swainston/Wiggins parties.

IN COURT PROCEEDINGS: STATUS CONFERENCE

Proceedings begin at 9:15 AM.

The Court and counsel discuss the identification of the related cases. Henceforth the Court and counsel will not utilize the "B" and "C" subcase identification for the two cases but instead will refer to them as 3:73-127 (hereinafter "the 127 case") and 3:73-128 (hereinafter "the 128 case") respectively.

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The Court proceeds with the agenda (ECF No. 2385.) Mr. Negri addresses the Court with regard to item 1 of the agenda by identifying the parties he represents (i.e. "Federal Claims") and the ones Mr. Guarino represents (i.e. "Tribal Claims").

Mr. Guarino, Mr. Herkovits, and Mr. DePaoli address agenda item 2. Judge Du inquired about the relationship between the 127 case and the 128 case, and whether the 127 case should be stayed pending the ruling of the Nevada Supreme Court in the 128 case. Counsel who commented (i.e., Mr. Guarino and Mr. Herskovits) essentially agree that the 127 case should not be stayed because the court can rule on the claims in the 127 case without resolution of the public trust doctrine by the Nevada Supreme Court. Judge Du indicates that the court will not stay the 127 case.

Mr. Guarino addresses Agenda item 3 with regard to service of documents on all parties and the requirements of ECF No. [2100]. Judge Du notes that there are motions pending from various parties that seek removal from the mailing list (ECF Nos. 2342, 2344, 2376) to change the type of notification (ECF No. 2381,) to substitute a new owner (ECF No. 2343) or to obtain information (ECF No. 2359[.]) The Court is inclined to grant these requests. Mr. Guarino, Mr. DePaoli and Mr. Herskovits address the issue of service on unrepresented and unresponsive parties. Judge Du indicates that the Court will not take action on these items until she reviews Judge Reed's order (ECF No. 1711.) Judge Du and Magistrate Judge Cobb direct counsel to revisit the superseding order regarding service (ECF No. 2100) and submit a proposed order on this issue within 30 days. In addition, Judge Du asked Mr. Guarino to prepare a proposed order granting these aforementioned motions and distribute it to counsel for review; counsel will have 7 days from the date they receive the proposed order to provide comments to Mr. Guarino. Mr. Guarino is to file the proposed order and to indicate any disagreements as well as proposed comments to the extent the other parties have any objections to the proposed order. the areas counsel on which counsel provided comment. Mr. Guarino is to email a Word version of the proposed order to Peggie_Vannozzi@nvd.uscourts.gov.

The parties are in agreement that under the original Case Management Order, litigation on Case 3-73-127 will proceed just as to the "Tribal Claims" and that litigation of the issues pertaining to the "Federal Claims" will be deferred.

Mr. Guarino, Mr. Negri and Mr. DePaoli address Agenda Items 4 and 5. Mr. Guarino suggests that the discovery plan and scheduling order be due one year from now. Magistrate Judge Cobb directs counsel to confer and propose address paragraph 6 of the supplemental case management order (ECF No. [1865]) and try to reach a consensus of how best to proceed. Both Magistrate Judge Cobb and Judge Du agree

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that previous orders will not be modified unless a party files a motion or stipulation to modify the schedule. Magistrate Judge Cobb directs the parties to file a traditional case management order and discovery plan and scheduling order. Mr. Guarino asks the Court for a deadline of 60 to 90 days from now to file the proposed plan. Mr. Johnston and Mr. DePaoli respond. Magistrate Judge Cobb directs the parties to meet and confer. Some discovery can be undertaken. Judge Du orders the filing of the discovery plan and scheduling order within 60 days.

Magistrate Judge Cobb sets the next status hearing for 12/19/2018 at 10:00 AM in Reno Courtroom 2. The proposed discovery plan and scheduling order and agenda for the status conference is due by 12/7/2018.

The parties agree that all other agenda items (items 6 through 10) have been addressed.

Adjournment: 12:15 PM.

DEBRA K. KEMPI, CLERK

U.S. District Court

By: Peggie Vannozzi

Deputy Clerk